

CHAPTER 2

INTERNATIONAL COMMERCIAL ARBITRATION AND INTERNATIONAL COMMERCIAL COURTS: TOWARDS A COMPETITIVE AND COOPERATIVE RELATIONSHIP

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I INTRODUCTION

The Singapore International Commercial Court (SICC) began operating in January 2015. The purpose of this paper is to analyze the relationship between international commercial arbitration and the new courts such as the SICC, established by nation states as part of their judicial systems but for the special purpose of dealing with international commercial disputes. As indicated by the opening words on its web site, "A Prime Destination for International Commercial Dispute Resolution,"¹ the SICC was established within the Singapore High Court to address international commercial disputes in accordance with the choice of forum by the parties. Its establishment was accompanied by the appointment of 12 international judges, including Yasuhei Taniguchi who seems to be selected because of his background of Japanese legal system. These judges conduct litigation at the SICC along with the senior judges of the Supreme Court of Singapore.

The opportunity to conduct a field survey of the SICC related to this study arose in September 2015. Somewhat unexpectedly, the survey revealed a sense of urgency and strong desire for the success of the SICC, which was widely shared by the lawyers in Singapore. Located in Singapore, which now has the top per capita GDP in Asia, the Singapore International Arbitration Centre (SIAC) has

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1 See the SICC Web site at <www.sicc.gov.sg>.

advanced recently, strengthening the perception that the city is a hub of international commercial dispute resolution. Therefore, the shared sense of urgency runs counter to my expectation because, in my perception, the legal industry of Singapore has a promising future with enough leeway. Therefore, the establishment of SICC was just a prior investment towards the future mainly for securing their advantageous position in the long run.

However, on further reflection, I noticed that the position of Singapore is now becoming to change. Singapore has begun to experience rapid change of its social environment, including political instability, the aging of its population, and an accompanying rise in the number of foreign workers. On the other hand, Hong Kong, which shares the common law tradition and is its rival in the legal industry of Asia, is backed up by the giant industrial zone of the Pearl River Delta and the general economic growth of China, which has naturally attracted many international commercial disputes to Hong Kong. In addition, China's Silk Road Strategy is directed towards Central Asia. Under these circumstances, there exists a common awareness that more aggressive strategies for innovating its legal service industry are needed for Singapore to maintain its present position.

Leading the promotion of the idea of the SICC was its present Chief Justice, Sundaresh Menon,² whose views on this court were revealed in a lecture he presented in Dubai in 2015.³ The origination of the concept was the commercial court established in the Queen's Bench of the Royal Court of Justice in England.⁴ Menon was also influenced by many aspects of the courts established within the Dubai International Financial Centre (DIFC), where Mr. Michael Hwang, a renowned barrister and arbitrator in Singapore, serves as Chief Justice. The DIFC

2 Mr Menon proposed the establishment of the SICC and initiated a study to prepare for its formation in 2013. Report of the Singapore International Commercial Courts Committee, November 2013, para.1 <www.mlaw.gov.sg/content/dam/minlaw/corp/News/Annex%20A%20-%20SICC%20Committee%20Report.pdf>.

3 Menon "International Commercial Courts: Towards a Transnational System of Dispute Resolution" Opening Lecture for the DIFC Courts Lecture Series 2015 <www.supremecourt.gov.sg/docs/default-source/default-document-library/media-room/opening-lecture---difc-lecture-series-2015.pdf>.

4 England's Commercial Court, located in London, handles many international commercial disputes. Its accumulated precedents have laid the foundation for England's commercial law to become a global standard. Mr Menon visited this court in 2012, and was inspired to conceptualize the SICC (Menon, above n 3 at para 10) writing: "In September 2012, I visited the London Commercial Court and observed that its caseload was burgeoning alongside a vibrant arbitration market. The London experience suggests that arbitration and commercial courts are not competing players in a zero-sum game. Rather, there is room for co-existence and development of these two systems of dispute resolution."

Courts have conducted revolutionary work in this field.⁵ Referring to these courts as "International Commercial Courts," Mr. Menon has carefully analyzed the situation in which international commercial arbitration has been placed against this backdrop.⁶ In other words, SICC has been designed to supplement the needs which international commercial arbitration in the present form could not meet.

International commercial arbitration still plays the main role in dispute resolution concerning international business. According to statistics concerning cases handled by major international arbitration institutions, there were 4,297 cases in 2012, 4,699 in 2013, and 4,989 in 2014.⁷ These numbers indicate that the central position of arbitration as a means of resolving international business disputes is increasingly unshakeable. This does not mean, however, that the future of international arbitration is uniformly bright. At the same time that the number of arbitration cases has been rising, problems with international arbitration have come to the forefront. According to a reliable survey⁸ that was published this year, answers to the question "What are the three worst features of international arbitration?" included "cost," "lack of effective sanctions during the arbitration procedures,"⁹ "Lack of insight into arbitrators' efficiency," and "lack of speed." It should be noted, however, that the low cost, fast resolution, and impartiality of arbitrators are all points where international arbitration is considered to be superior to litigation procedures provided by national governments. As the three most highly evaluated points of arbitration on the other hand, "Enforceability of

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- 5 Dubai International Financial Centre, which is aiming to become the centre of international financial transactions in the Middle East, started up by integrating its own legal system with a dispute resolution system modelled on that of England. In 2011, it began handling worldwide international commercial disputes based on jurisdiction agreements.
 - 6 Menon "Origins and Aspirations: Developing an International Construction Court" (2014) *The International Construction Law Review* 341 at 341.
 - 7 Baker & McKenzie: *Global Arbitration News* 2015 August 5, by Dr Markus Altenkirch and Nicolas Gremminger <<http://globalarbitrationnews.com/parties-preferences-in-international-arbitration-the-latest-statistics-of-the-leading-arbitral-institutions-20150805>>.
 - 8 QMUL and White & Case, 2015 *International Arbitration Survey: Improvements and Innovations in International Arbitration*, at p 61 <www.arbitration.qmul.ac.uk/docs/164761.pdf>. This survey was based on 763 answers from various parties with interests in international arbitration from March to May 2015 (70% have experienced five or more cases of international arbitration during the past five years) from March to May 2015. These parties included researchers (4%), arbitration body staff (2%), arbitrators (11%), almost equally involved as lawyers and as arbitrators (12%), expert witnesses (2%), corporate in-house lawyers (8%), independent lawyers (49%), and others (judges, funding lenders, government related parties) (12%).
 - 9 In the survey, it is explained that this problem concerns a lack of incentives for lawyers in particular to perform procedures efficiently (Survey, above n 8 at p 7).

awards" and "avoiding specific legal systems/national courts" were the top two, followed by "flexibility."

It should be noted that there has been progress towards faster and less expensive litigation procedure caused by the reform of judicial systems—mainly litigation procedure—in the Anglo Commonwealth jurisdictions that has occurred recently in response to successful reformation of the judicial system in England. Despite this, it appears that international arbitration continues to be overwhelmingly superior in terms of recognition and enforcement of arbitration awards and neutral dispute resolution system. To be precise, while international arbitration, at least in some respects, still have some serious problems even compared with the litigation systems provided by the states, and many users of international arbitration are still dissatisfied with it in various ways, it is undeniable that parties can sometimes be in a position to have no choice but to turn to international arbitration.

The current paper posits that the high cost of arbitration procedures and the lack of transparency of the efficiency of procedures could be improved through the voluntary efforts in the community of arbitration institutions and arbitration lawyers. Moreover, it is highly possible that improvements will occur if the creation of the new international commercial courts triggers the functioning of the principle of competition. On the other hand, the superiority of recognition and enforcement of arbitration awards is, in many ways, the result of the creation of an international legal environment centered on the New York Convention, and the improvement in this aspect presumably requires international efforts, including negotiations between states. This paper adopts perspectives such as the above to reevaluate the New York Convention in the following section, and analyze the competition between international commercial arbitration and international commercial courts in section III. Section IV is a study of recent trends aiming for global recognition and enforcement of international commercial dispute resolutions. Brief conclusions are presented in Section V.

II REEVALUATION OF THE 1958 NEW YORK CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

It is no exaggeration to say that the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 ("the New York Convention" or "the Convention") has had an overwhelming impact on present-day international arbitration. This section examines the background and achievements of the Convention.

2.1 Background and Achievements of the New York Convention

The New York Convention, adopted by the United Nations in 1958 as a multilateral international convention, has had historical success in the field of Civil-Commercial Law. It was intended to achieve a long-held deep desire of the International Chamber of Commerce (ICC), which stated in 1923 that the establishment of an international convention to ensure that courts in all nation states of the world will recognize the validity of arbitration agreements reached in international business is an urgent challenge.¹⁰

In addition to mandating respect for international arbitration agreements, the New York Convention successfully simplified procedures for their recognition and enforcement, forming the foundations that have helped international arbitration flourish until the present day. Regarding international arbitration agreements, Article 2 paragraph 3 stipulates that "The court of a Contracting state, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed," creating the obligation of the courts of Contracting states to refrain from enforcing its international civil jurisdiction if there exist valid arbitration agreements between the parties. In brief, the courts of approximately 160 Contracting states recognize the effect of international arbitration agreements with priority on the jurisdictions of each country's court.

The content of the New York Convention goes even further. Article 3 continues on the subject of recognition and enforcement of arbitration awards. "Each Contracting state shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles. There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards." This obligates Contracting states to international recognition and enforcement of arbitration awards based on arbitration agreements deemed valid

¹⁰ International Chamber of Commerce, Resolutions Adopted at the Second Congress, Rome, March 1923 (Cited in Greensberg, et al *International Commercial Arbitration* (Cambridge University Press, 2011) at p 7.

under the Convention at the same time as it prohibits placing a more onerous burden than domestic arbitral awards.¹¹

The following is a summarization of the roles played by the New York Convention in building international arbitration today. Through cooperation between the ICC and the United Nations, this Convention successfully formed a powerful international legal framework that supported international arbitration in 1958, in the infancy of the present form of international arbitration. Supported by the legitimacy of the United Nations in international politics, there are now about 160 Contracting states to the Convention. Thanks to this success, the promotion of international arbitration has been recognized as one of the major challenges to be tackled by the United Nations. To help meet this challenge, the United Nations Commission on International Trade Law (UNCITRAL) was established in 1966 as a committee attached to the UN General Assembly. Since then, the UNCITRAL aggressively promoted international arbitration by establishing various legal texts with strong impact concerning international arbitration.

On the other hand, international efforts to establish a framework for the international recognition and enforcement for the judgment by national courts, which is comparable to New York Convention, advanced slowly, until finally in 2005, the Hague Convention on Choice of Court Agreements was adopted to ensure international enforcement of judgments based on choice of court agreements by the parties.¹²

2.2 *Delayed Globalization of Choice of Court Agreements*

Many of the current arbitration agreements select the form of institutional arbitration and entrust the supervision of the procedures to arbitration institutions. Similarly, the practice of parties agreeing to select a court in one of the sates in the world and subscribe to its jurisdiction for future disputes between them has existed for a long time. Considered simply, such a choice of court agreement should be a choice equivalent to an arbitration agreement. Moreover, a court, as part of a country's judicial system, is presided over by judges whose qualification is controlled by the state authority, and the management of procedures is under

11 A direct judgment by a court of the enforcing country and recognition of the validity of the decision by a court of the arbitration country as its premise, are not essential conditions for recognition and enforcement under the New York Convention. This is based on a proposal made by the Government of Holland at the adoption conference (the so-called Dutch Proposal). See Pieter Sanders "The Making of the Convention" in *Enforcing Arbitration Awards under the New York Convention: Experience and Prospects* (United Nations, 1999) at p 4.

12 This convention was drawn up by Hague Conference on Private International Law <www.hcch.net/en/instruments/conventions/specialised-sections/choice-of-court>.

the responsibility of the court secretariat. In contrast, arbitrators decide the case based on the qualifications as an individual citizen, so it cannot be said the judgments of national courts have less credibility than the arbitration awards rendered by international arbitrators whose proceedings are monitored mainly by an arbitration institution, which is nothing more than a private organization. Nevertheless, recognition and enforcement of a judgment of a national court based on a choice of court agreement have lagged far behind the dramatic progress of the international arbitration system mainly advanced by the New York Convention.

The causes of this are not necessarily clear, but one possible explanation is the fact that because international arbitration could tentatively satisfy international business' needs as a dispute resolution system to some extent, there has been no keen awareness of the need for the dispute resolution based on choice of court agreements. The following part provides a brief explanation of the present state of the legal environment in which international choice of court agreement now stands in Japan and in Europe, followed by an analysis of the state of the Hague Convention on Choice of Court Agreements ("the Hague Convention"), which is now starting to attract the attention in the world.

2.2.1 Choice of Court Agreements in Japan

In Japan, the legal effect of choice of court agreement is now governed by the articles stipulating international civil jurisdiction, which was adopted by the 2011 revision of the Code of Civil Procedure. The Code of Civil Procedure Article 3-7,¹³ paragraph 1 states that "The parties may determine by agreement the state with whose court or courts an action between them may be filed," and in paragraph 2, that the agreement should be made with respect to an action based on certain legal relationships and made in writing.

The 2011 revision is significant, because it increases the transparency of the rules of international civil jurisdiction in Japan, which was taken the lead in advanced precedents of the Supreme Court for a long while. In the *MS Chisadane*

13 See Code of Civil Procedure Article 3-7.

case¹⁴ of November 28, 1975, the Supreme Court had already rejected its international civil jurisdiction because of the existence of a provision in a B/L that stipulated a choice of court agreement exclusive to the court in Amsterdam concerning a lawsuit regarding transport contract. It held that it would be sufficient if the Amsterdam Court had valid jurisdiction over this case under the procedural law of Netherlands, without stipulating that a judgment made by the Amsterdam Court be recognized and enforced in Japan as an essential condition.

Compared to the internationally cooperative attitude of Japanese courts towards the respect for choice of court agreement selecting overseas courts, a rather strange aspect of discussions as to international civil jurisdiction in Japan is the general lack of concern regarding the international enforceability of the judgments made by the Japanese courts. The DIFC Courts, for example, place top priority on securing the international enforceability of their judgment as discussed below. It seems natural because, if a judgment of the DIFC Courts can catch up with international arbitration awards in this aspect, the DIFC Courts could acquire greater appeal as an alternative choice to resolve an international commercial

14 Minshu Vol 29 No 10, from p 1,554 of Saiban November 28, 1975. X demanded that Y pay compensation for damages and a late payment penalty fee based on the statutory rate for commercial matters, and lodged the case with the Kobe Regional Court, which has jurisdiction over the place of business of the respondent for final civil appeal. The respondent for final civil appeal argued prior to the decision that the Court of the City of Amsterdam had exclusive jurisdiction over this litigation and the Kobe District Court did not, because on the bill of lading there is an English language jurisdictional agreement (referred to below as "the Jurisdictional Agreement") stating that "all litigation based on this contract of carriage shall be lodged in a court in Amsterdam, and if the carrier lodges litigation in another court or wilfully does not comply with the this court's jurisdiction, another court cannot have jurisdiction regarding any other litigation." The respondent argued that this jurisdictional agreement was an agreement on international exclusive judicature.

The heart of this judgment is the provision that "an agreement on international exclusive jurisdiction that excludes Japan's jurisdiction regarding a certain case of litigation and designates only a court in a specified foreign country as the court of first instance, is in principle, valid under Japan's Law of International Civil Procedure as long as two conditions are satisfied: [a] the said case is not exclusively compliant with Japan's jurisdiction and [b] the designated court in a foreign country has jurisdiction over the said case under foreign law.

If the purpose of the need for the above condition [b] is assumed to be that the said foreign court, not having jurisdiction over the said case, cannot accept the said case, the parties can not only not accomplish the purpose of the agreement on jurisdiction, but also the result will be nothing else but the loss of the opportunity to obtain a judgement from both courts, so when the court in the said foreign country has jurisdiction over the said case under the law of that country, the right (b) essential condition should be considered to be satisfied, and the said foreign law will not necessarily need to recognize the validity of the agreement on international exclusive judicial jurisdiction. In this case, according to the confirmation of the original judgment, the court in Amsterdam has legal jurisdiction over this case, so it cannot be said that the point argued is illegal because the original judgment did not rule on this point."

dispute. Unfortunately, there seem to be no full-scale studies of recognition and enforcement overseas of the judgments made by courts in Japan so far.

2.2.2 *Choice of Court Agreements in the EU*

The position of choice of court agreements has been also unstable in Europe, despite that the New York Convention was quickly and firmly established in Europe. Under the Brussels I Regulation, which stipulates the rules of international civil jurisdiction among EU member states, if the same case is filed in the courts of different member states, the Brussels I Regulation, for preventing concurrent proceedings, decides the priority just by first-come-first-served basis. This may be appropriate under the situation where the legal systems of the member states are unable to cooperate with each other smoothly and adequately, but this method results in particularly difficult problems related to the handling of choice of court agreements. In the case of litigation concerning a dispute under a contract which includes a choice of court agreement, for example, even if one party initiates a lawsuit in a court of a member state different from the country agreed on, the first litigation priority always prevails over. As a result, the court selected under the contract was not permitted to start the proceeding until the court where the litigation was first filed rejects its own jurisdiction.¹⁵ To turn such strict adherence to the first litigation priority to their own advantage, the parties frequently used the litigation strategy: filing lawsuits in member states¹⁶ where litigation procedures are conducted very slowly as a delay tactics.

A revision to give the choice of court agreements priority over other grounds for jurisdiction in the Brussels I Regulation, was finally achieved by the Brussel I (Recast) Regulation of 2012, which took effect in 2015. According to the revised provisions, a court in a member state selected by the parties under an exclusive jurisdiction agreement has priority as an exception to the first litigation priority rule stipulated by Article 29. It is also clearly stipulated by Article 31 that, until the said court rejects its own jurisdiction, a court of another member states must suspend or dismiss the claim. In this way, even within the EU, the priority of choice of court agreements over other grounds for international civil jurisdiction was clarified only very recently.

15 The Court of Justice of the EU clarified such a position by a preliminary ruling in 2003 (*Erich Gasser GmbH v MISAT Srl*, (Case C-116/02, ECR 2003 p I-14693).

16 As a typical example, the strategy of filing first litigation with an Italian court to delay the litigation and obstruct the opposite party's procedures is so widespread that it is now called "the Italian Torpedo," and was recognized as a problem under the Brussels I Regulation.

2.2.3 *Hague Convention on Choice of Court Agreements (2005)*

The Hague Convention on Choice of Court Agreements ("the Hague Convention") is intended to build a global framework for international respect for valid choice of court agreements and, based on that, to facilitate the recognition and enforcement of judgments decided by the state courts based on such agreement. In brief, it tries to achieve the same level of effect for choice of court agreements realized within the EU by the Brussels 1 Regulation (Recast) on a global scale. As entire EU member states became the contracting states of this Convention, it took effect in October 2015.

Under the Hague Convention, a court selected by a valid choice of court agreement obtains international jurisdiction, and it may not refuse its jurisdiction at its own discretion.¹⁷ On the other hand, a court in a contracting state to the Convention which is not selected by the parties must respect the jurisdiction of the court that the parties select, and suspend or reject the litigation. In this way, only one court may make a decision under the choice of court agreement, and this decision is recognized and enforced in all of the contracting states to the Convention, except the narrow exceptional cases. In sum, the Hague Convention tries to secure the same level of effects to international choice of court agreement, as what the New York Convention granted to international arbitration agreements about half a century earlier, by using almost identical legal framework and based on the foresight that was reflected in the New York Convention.

However, to be precise, the New York Convention granted international arbitration agreements even a greater level of effect than what the Hague Convention did for choice of court agreements. Under the Hague Convention, only a judgment which is valid and enforceable in the State of origin or the selected jurisdiction can be recognized and enforced in other Contracting states (Article 8 paragraph 3). In contrast, under the New York Convention, an arbitration award, which is the object of recognition and enforcement, is not necessarily the one which is enforceable in the seat of arbitration. In other words, even if the validity of an arbitration award differs between the seat of arbitration and the place of enforcement, this does not inevitably obstruct the recognition and enforcement of the arbitration award. The validity that the New York Convention granted to arbitration award is thus even stronger than that granted by the Hague Convention.¹⁸

17 See Hague Convention on Choice of Court Agreements, Article 5.

18 See, above n 11 regarding this point.

As shown above, as a result of the New York Convention and the subsequent Influential texts as to international arbitration by UNCITRAL, international arbitration has become a panacea for international business disputes. On the other hand, the establishment of international rules concerning the choice of court agreements was lagging far behind. It is probably correct to say that the establishment of the SICC, the DIFC, and similar courts will create new attractive alternatives for international commercial dispute resolution by reviving and stimulating international choice of court agreements.

III COMPETITIVE ASPECT OF INTERNATIONAL COMMERCIAL ARBITRATION AND INTERNATIONAL COMMERCIAL COURTS

3.1 Recent Rise of International Commercial Courts

To evaluate whether international commercial courts can compete with international arbitration, it is necessary to understand the present situation of international arbitration. The results of a survey conducted in 2015 reveal the following merits and demerits of international arbitration.¹⁹

To begin with the merits, the widest consensus from the survey results cited a feeling of stability of international recognition and enforcement based on the New York Convention (65%) and the ability to avoid specific legal systems and national court systems (64%), followed by flexibility (38%), selection of arbitrator by the parties (38%), confidentiality obligation and respect for privacy (33%), neutrality (25%), and finality (18%). For the international commercial courts to catch up with international arbitration, they will have to make improvements in these areas.

Demerits of international arbitration on the other hand were high cost (69%), lack of effective sanctions during the arbitration procedures (46%), lack of insight into the efficiency of arbitrators (39%), lack of speed (36%), intervention of national courts (25%), lack of any third party joinder mechanism (24%), lack of appeal mechanism on the merits (17%), and lack of insights into the efficiency of arbitration institutions (12%).

To examine how these merits and demerits of international arbitration are considered in the process of designing an international commercial court, this paper analyzes the design of the systems of the SICC and the DIFC Courts.

¹⁹ 2015 Survey, above n 8 at p 6-7. This survey was a questionnaire survey asking respondents to indicate the three major merits and three major demerits of international arbitration. The values in brackets below are the results.

3.2 *Response to Distrust of Arbitrators and Arbitration Lawyers*

Recently, persons concerned with arbitration have become to be worried that arbitrators and arbitration lawyers may not be conducting the arbitration process efficiently. For example, many problems with the arbitrator selection procedures and conflict of interest problems, often causing long delays in the proceedings. To deal with such problems, the IBA Guidelines on Conflict of Interest in International Arbitration have become increasingly important. There is now a shortage of personnel resources of international arbitrators, and only a limited number of law firms handle such cases; hence, problems of conflict of interests of arbitrators and lawyers with the law firms are fairly common. It is said that, because the party appointed arbitrators are virtually nominated by law firms representing the parties, there are cases where an arbitrator hesitates to give an arbitration awards that will upset a major law firms that he expects will nominate as arbitrators in future cases. It is also rumored that some arbitrator specialized in investment treaty arbitration, by always giving judgments favorable to the state parties, attempts to increase their opportunities for nomination by the states receiving the investment. Although these are mere speculations, the very fact that many concerned persons have such suspicions is a problem for the present international arbitration. International commercial courts where judges are appointed by the governments can more easily prevent such kind of problems in various measures.

3.2.1 *The Dubai International Financial Centre (DIFC) Courts*

The Dubai International Financial Centre (DIFC), which is an independent jurisdiction carefully designed and artificially established as the center of new financial business in the United Arab Emirates in 2004, has been successful in becoming a center of international business in the Middle East. It has paid full attention to create a legal system suited to international finance and a dispute resolution that ensures impartial resolutions of the disputes that occur naturally in the process of stimulating such transactions, thereby increasing its trustworthiness.

The legal system itself is patterned after English law, and the DIFC Courts adopted the procedural rules of the commercial court in the Queen's Bench of the Royal Court of Justice in England as their model. Along with the DIFC Courts, an arbitration institution called the DIFC-LCIA has been formed by linking up with the London Court of International Arbitration (LCIA), one of the top international arbitration institutions with its headquarters in London. In this way, the trustworthiness of the dispute resolution system of the DIFC is created by an

intentional strategy of franchising the experience and reliability of the English system in the field of international commercial dispute settlement.

To build the state-of-art dispute resolution system, many renowned lawyers from common law jurisdictions have been appointed as judges.²⁰ As Chief Justice in particular, Michael Hwang, who is a senior counsel and a renowned international arbitrator in Singapore was appointed, and the strategy of skillfully building a dispute resolution system under his leadership has created a series of innovative measures for boosting the progress.

3.2.2 *The Singapore International Commercial Court (SICC)*

So what policy positions has the SICC taken? One similarity with the DIFC Courts is the appointment of international judges. The international judges of the SICC consist of 12 world renowned jurists, including those from the common law jurisdictions plus others from the civil law jurisdiction, such as Austria, France, and Japan.²¹ Singapore, clearly viewing international business dispute resolution as a future growing market,²² designed the SICC as a system that would attract this demand. Mr. Menon, the Chief Justice of Singapore, played a central role in the introduction of the SICC in this way. He designed the SICC to avoid the problems he found through a careful analysis of the situation of international arbitration systems.²³

Unlike the DIFC, Singapore had already established its legal system as one of the major jurisdiction of the Anglo Commonwealth. Compared with the DIFC Courts, the SICC has to deal with an important issue: how to position the formation of precedents by the SICC in this setting. Through international commercial arbitrations, it is difficult to build case law of precedents based on

20 The present DIFC Courts Judges and their nationalities are: Chief Justice Michael Hwang, SC (Singapore); Deputy Chief Justice Sir John Murray Chadwick (UK); HE Justice Omar Juma Al Muhairi (UAE); HE Justice Ali Shamis Al Madhani (UAE); HE Justice Shamlan Al Sawalehi (UAE); Justice Sir David Steel (UK); Justice Roger Giles (Australia); Justice Tun Zaki Azmi (Malaysia); Justice Sir Anthony David Colman (UK); and Justice Sir Richard Alan Field (UK).

21 The international judges of the SICC (as of Feb. 2015) are: Justice Carolyn Berger (United States); Justice Patricia Bergin (Australia); Justice Roger Giles (Australia); Justice Irmgard Griss (Austria); Justice Dominique Hascher (France); Justice Dyson Heydon (Australia); Justice Vivian Ramsey (UK); Justice Anselmo Reyes (Hong Kong); Justice Bernard Rix (UK); Justice Yasuhei Taniguchi (Japan); and Justice Simon Thorley (UK).

22 Report, above n 2 at para.7-10.

23 Menon, above n 3 at para.7-8. Menon's most important inquiry was first announced from the podium, then published as papers that have been published in law magazines; almost all can be downloaded online.

awards by arbitrators, who resolve disputes based on their personal qualifications. Moreover, because arbitration procedures are usually subject to confidentiality obligations, even if an arbitration award is important, there have been limits to using it as information as basis for establishing legal precedent. In contrast, because the SICC is positioned within the Singapore High Court, its decisions naturally become the source of law in Singapore. It has been pointed out that one reason why England has commanded the formation of international commercial law is that the Commercial Court in the Queen's Bench of the Royal Court of Justice, which is the center of the formation of common law, has successfully accumulated precedents. The incorporation of such norm-making by the SICC is extremely significant.

3.3 *Rivalry with International Arbitration by International Commercial Courts*

3.3.1 *Setting the Jurisdiction of International Commercial Courts*

International arbitration, a dispute resolution system based on agreements, is heavily dependent on the existence of arbitration agreements by the parties. For the SICC, choice of court agreements by the parties to international transactions are central to establishing its jurisdiction too.²⁴ In brief, the basic and essential conditions for the SICC to exercise jurisdiction are that the case must be a commercial case with international characteristics²⁵ and the SICC must be selected by an agreement between the private parties. In contrast, the DIFC Courts were originally established only to resolve the disputes occurring within the DIFC. Although, since October 31, 2011, they have also been able to exercise the jurisdiction when the parties agreed to select the DIFC Courts.²⁶ This was the result of an aggressive policy in an attempt to provide its dispute resolution services widely at an international level, based on the self confidence that this court has achieved the reliability and international competitiveness.

24 It was assumed from the beginning that as part of the Singapore High Court, there would be cases where the SICC would exercise jurisdiction based on their transfer inside the Singapore legal system. It has taken over some cases suitable for SICC consideration, as a result of them already being moved into the High Court. See the Singapore Supreme Court Judicature (Amendment) Act.

25 It is not a strict definition of commercial, as in continental law; rather, it is a criterion to judge the suitability of the SICC to handle a case.

26 Law No 16 of 2011 on Amending Some Provisions of Law No 12 of 2004 Concerning the Dubai International Financial Centre Courts.

3.3.2 *Rapid Dispute Resolution*

As indicated by the recent survey, as to its speed of disputing resolution, there has been a drastic decline as the merit of selecting international arbitrations. This seems to have some relationship with the reform of the judicial systems, which, promoted since the mid-1990s beginning in England,²⁷ has become widely successful. Under the leadership of Lord Woolf,²⁸ judicial reform has included, among its major goals, speeding up the litigation process, as well as reduction of its cost. Its success has not been limited to England; it has spread throughout the Anglo Commonwealth jurisdictions, and there are other jurisdictions where legal reform, including faster litigation procedures, are continuing to appear.²⁹ Even in Japan, for an example, procedures in regional courts in urban areas are often said to be faster and less expensive than international commercial arbitration.

3.3.3 *Joinder of Litigation Procedures of Third Parties*

It is not unusual for international arbitration to handle very costly, complex cases. Among such cases, there are those where it is beneficial to involve third parties not initially among the parties in the same proceedings, to resolve disputes effectively. However, because arbitration procedures are based on an arbitration agreement between the parties, it is not easy to justify joinder of a third party in an arbitration procedure after it has begun. For example, the Group of Companies doctrine and other skillful interpretations have been advanced as a way to overcome such restrictions.

In contrast, an international commercial court, which is part of a country's judicial system, can rely on a long-established civil procedural law. It can therefore generally deal with the cases of joinder of a third party more easily than international arbitration.³⁰

3.3.4 *Possibility of Legal Representation by a Foreign Lawyer*

The ability to freely select a lawyer from one's own country or a foreign lawyer for international arbitration is significant for the parties inasmuch as it

27 The report by Lord Woolf and other reports related to the reform of the legal system of England are published on the following Web site: <<http://global.oup.com/uk/orc/law/alevel/dugdale4e/resources/weblinks/>>.

28 The next is the most important report: Access to Justice (Final Report) Lord Woolf [July 1996].

29 As a recent example, it is possible to cite the improvement of the court system in Malaysia. Even here, litigation procedures have been sharply accelerated.

30 See the Singapore Supreme Court Judicature (Amendment) Act.

ensures impartiality and neutrality from a specific legal system. However, many jurisdictions impose strict restrictions on foreign lawyers as representing the parties in litigation procedures in the state courts. In this regard, the SICC approves foreign lawyers registered in Singapore to act in litigation in the stipulated range, such as cases with a foreign law as the applicable law. This policy permits the functionality of the SICC to closely resemble to that of international arbitration.³¹

3.3.5 Offshore Cases and Obligation for Confidentiality at the SICC

"Offshore Cases" is the term used by the SICC to refer to cases where the law of Singapore is not the applicable law of the dispute; cases where the subject matter, the object, is not an object of regulation under Singapore law; and cases unrelated to Singapore other than cases where the parties chose Singapore law as the applicable law or subscribe to Singapore jurisdiction. For such cases, the ways to bridge the gap with international arbitration in a specified range are devised by relaxing the obligation for confidentiality according to the intention of the parties.³² In many such cases, to be able to select a foreign lawyer as a representative for the litigation, the SICC will probably continue to acquire more and more characteristics of a competitor with international arbitration.

IV INTERNATIONAL COMMERCIAL DISPUTE RESOLUTION AND RECENT TRENDS AIMING FOR ITS GLOBAL RECOGNITION AND ENFORCEMENT

The premise of this paper is that the present overwhelming dominance of international arbitration has been established by the recognition and enforcement system of international arbitration awards established mainly by the New York Convention. In this context, an important challenge to be met by the DIFC Courts and the SICC, which are parts of the legal systems of states, is to catch up with international arbitration by enabling them to overcome the handicaps as to the recognition and enforcement derived from this international framework.

The measures to deal with such problems can be broadly categorized as the following three methods. The first is building an international legal framework for the recognition and enforcement of foreign judgments based on agreements between the states, including both regional and global scopes. The second is converting the contents of dispute resolutions into the form of arbitration awards with some legal manipulation, thereby using the New York Convention as the

31 Legal Profession (Amendment) Act [Singapore].

32 Singapore Supreme Court, Rules of Court (O. 110, r. 30).

foundation for their recognition and enforcement. The third is to conclude individual memoranda between the courts in different jurisdictions, thereby fostering the practice of mutual recognition and enforcement. This third method, aggressively introduced by the DIFC Courts in particular, is based on the similarity of legal cultures and practical necessity. It also requires mutual trust between the courts of both sides.³³

4.1 Building the International Legal Framework for Recognition and Enforcement of Foreign Judgments

4.1.1 Regional Agreements

There are agreements that ensure that countries like Singapore and other Anglo Commonwealth jurisdictions can mutually recognize and enforce the judgments each other. The SICC has already the legislative frameworks for mutual recognition and enforcement with the United Kingdom, Australia, New Zealand, Malaysia, Brunei, and India.³⁴

A movement to establish international agreements to smooth the recognition and enforcement of judgment by foreign courts within specified regional areas had already appeared. First was the Brussels 1 Regulation of the EU, which was promoted aggressively from a relatively early stage of the movement to consolidate the market in the Europe. Called the Brussels Convention, it was first adopted in 1968 as a multilateral convention based on the negotiations between the states. It was intended to unify the rules of international civil jurisdiction among the countries in Europe to establish the framework for facilitating the recognition, and enforcement of foreign judgments based on the unified rules. As the Brussels Convention could only admit member states of the EC at that time, the Lugano Convention, which enacted as the identical rules in order to expand

33 In the preamble (26) to the Brussels 1 Regulation (Recast) that functions as the foundation of free movement of judgments by courts in member countries of the EU, the term "mutual trust" is used. It is also impressive that at this time, in the EU, the legal jurisdiction in which private international law was traditionally handled, is called "judicial cooperation in civil matters." Regulation (EU) No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Recast), Preamble (23) states that "Mutual trust in the administration of justice in the Union justifies the principle that judgments given in a Member State should be recognised in all Member States without the need for any special procedure. In addition, the aim of making cross-border litigation less time-consuming and costly justifies the abolition of the declaration of enforceability prior to enforcement in the Member State addressed. As a result, a judgment given by the courts of a Member State should be treated as if it had been given in the Member State addressed."

34 Reciprocal Enforcement of Commonwealth Judgments Act (RECJA); Reciprocal Enforcement of Foreign Judgments Act (REFJA).

the regime of recognition and enforcement to the EFTA countries, was adopted in 1988. These two conventions operated in parallel, until the Amsterdam Treaty, the basic EU treaty, came into force in 1999. At that point, the EU obtained the authority to directly stipulate regulations concerning judicial cooperation in civil matters (corresponding to the field traditionally called "Private International Law"), and since then, it has been transformed into the Brussels 1 Regulation. It has been revised several times since then, and the Brussels 1 Regulation (Recast) that was revised in 2012 and came into force in 2015 is now being applied. Since the Amsterdam Treaty came into force, many EU regulations have been enacted in the sphere of judicial cooperation in civil matters, speeding up the establishment of uniform regulations in the EU. On the other hand, as a result of the increase in the number of member states of the EU, most of the countries where the Lugano Convention had been applied are now subject to the Brussels 1 Regulation as EU member states. However, as there are no rules concerning international arbitration in the Brussels 1 Regulation, each member state still has to apply the rules developed by each state.

With regard to the DIFC in particular, the DIFC has now established the international agreements based on the Gulf Cooperation Council³⁵ (GCC).³⁶ Recognition and enforcement of foreign judgment under this agreement are already recognized by the DIFC Courts.

4.1.2 Hague Convention on Choice of Court Agreements (2005)

To create a framework for international recognition and enforcement of judgments which is comparable to the New York Convention for arbitration awards, international organizations with the power to establish agreements between states in the world must play a role. The Hague Conference on Private International Law (HCCH) has long played such a role in the fields of international civil procedural law and private international law. With regard to international civil jurisdiction, in 1994, it started a project to prepare a Convention covering the vast field of international civil jurisdiction. As a result of setbacks, however, the Hague Convention on Choice of Court Agreements, intended to achieve global recognition and enforcement of judgments focused on choice of court agreements only, was adopted in 2005. Even the validation of this Convention appeared at risk for a while, but it came into force in October 2015 through affiliation with the EU. Singapore also has become a contracting state

³⁵ Present member countries are Qatar, Kuwait, Bahrain, Saudi Arabia, Oman, and the UAE.

³⁶ Protocol on Enforcement of Judgments, Letters Regulatory, and Judicial Notices, issued by the Courts of the Member States of the Arab Gulf Co-operation Council.

from November 2016 to expand the international enforceability of the judgments of the SICC. Based on the traditional common legal culture of the Anglo Commonwealth jurisdictions, legal grounds simplifying mutual recognition and enforcement of judicial judgments of courts in Singapore are already in place. When this Convention enables SICC decisions to also be recognized and enforced smoothly in the EU member states, the international enforceability of international commercial dispute resolutions by the SICC rapidly expands.

4.2 Applications of the New York Convention

4.2.1 Application of the New York Convention to International Mediation

The advance of international commercial courts discussed by this paper could be referred to as the third wave of challenge to the establishment of modern dispute resolution system suitable for international business. After international arbitration, international mediation has long been attracted attention as the second wave. International arbitration has strengthened its adversarial characteristics as a law-based dispute resolution system, and the position and importance of international commercial mediation, as an alternative dispute resolution method to arbitration has not changed. Mediation is essentially a dispute resolution method based on negotiations and agreement between the parties, with a mediator encouraging the formation of an agreement through the support of these negotiations. Arbitration requires a large quantity of evidence and lengthy trial-like procedures, while mediation aims to resolve a dispute quickly through concessions without causing a break in relations between the parties. As a result, it often succeeds in efficiently resolving complex business disputes.

It has been said that, in China and the Far East, there are strong tendencies for judges to promote reconciliation even after litigation has begun. In Japan, even for disputes related to family law, a system that emphasizes mediation is adopted based on Asian values, which considers social harmony to be very important.

A method combining mediation and arbitration as an international business dispute resolution method has been developed mainly by the China International Economic and Trade Arbitration Commission (CIETAC), and is known as Med-Arb. Essentially, when an arbitrator decides that it would be better to resolve a case submitted for arbitration based on agreement by the parties, the arbitrator will, of his own initiative, begin to participate in the dispute resolution as a mediator midway in the arbitration procedure; when an agreement results from this approach, it is confirmed in the form of an arbitration settlement. As the result of the mediating process, the resolution finally reached between the parties is converted to an arbitration awards and it can take advantage of the

international recognition and enforcement procedure laid down by the New York Convention.

Such a process takes advantage of the merits of mediation while retaining its character as an expedient mechanism that also possesses the benefits of recognition and enforcement of international arbitration. However, from the legal perspective of common law, there are aspects of the process that are difficult to approve. In adversarial dispute resolution process such as arbitration and litigation, reaching a predictable settlement by strictly controlling the contents, form of, and range of evidence, etc. is very important. In contrast, a mediator conducts a wide range of activities to search for a resolution proposal that can satisfy both parties by gathering information from them. Therefore, a mediator can handle a far wider range of information than an arbitrator, and is often obligated to maintain strict confidentiality of both parties' information. Accordingly, some argue that a person who has changed his role from arbitrator to that of mediator cannot ethically be allowed to return to the role of arbitrator while retaining the extensive information obtained during the mediation process. Even if it is assumed to be possible to find a unique value in Med-Arb itself, evaluations are divided concerning the process; borrowing the recognition and enforcement system under the New York Convention by finally adopting the outward appearance of an arbitration award.

However, if one assumes that the success of the New York Convention, as analysed above, is an important achievement ahead of its times, then it is not enough just to criticize it, because it has been employed as an opening to build a global dispute resolution system that can respond to the necessity of international business. If Med-Arb can be applied while ensuring benefits for both parties and impartiality, then it can be established as one of the important options to ensure efficient dispute resolutions.

Recently, a new method called Arb-Med-Arb has received attention: a method where the Singapore International Arbitration Center (SIAC) sends a case submitted for arbitration based on an agreement by the parties, through inter-organizational links with the newly established Singapore International Mediation Center (SIMC), to the SIMC during its procedures. When an agreement is reached through mediation, SIMC, by returning the case to the SIAC to reach an administrative decision called Consent Award, thereby it is possible for the parties to utilize the New York Convention-based recognition and enforcement system.³⁷

37 See web site at <www.siac.org.sg/model-clauses/the-singapore-arb-med-arb-clause>.

4.2.2 *Application of the New York Convention to International Investment Dispute Resolutions*

Another recent trend has been the use of the phrase "international arbitration" in a sense to include both international commercial arbitration and investment treaty arbitration. Even a survey announced in 2015³⁸ uses the phrase. Various background circumstances account for this. First, whether commercial arbitration or investment arbitration, most arbitration cases are handled by a small number of lawyers well versed in such work. Second, recently, there is an increasing number of disputes involved in international violations of public order or criminal law, even among commercial cases. On the other hand, investment treaty arbitrations basically deal with disputes related to infrastructure or natural resource related businesses, demanding specialized knowledge of such fields of business. For such reasons, distinction between them is becoming less significant.

In addition, recent dispute resolution provisions under investment agreements (ISDS clauses) often establish multiple choices of dispute resolution institution. Article 9.18 of the text of the Trans-Pacific Strategic Economic Partnership Agreement (TPP) was announced, allowing the use of international arbitration governed by the UNCITRAL arbitration rules or arbitration using another arbitration institution, in addition to arbitration based on the rules (including additional facility rules) of the International Centre for Settlement of Investment Disputes (ICSID). In other words, it cannot be stated positively that investment treaty arbitration is the arbitration in a special form conducted under the ICSID.

According to the data that was announced by UNCTAD,³⁹ arbitration cases based on investment agreements up to the end of 2012 numbered 518 cases including only those ascertained, but the ICSID was only responsible for 61%, while 28% were handled as ad-hoc arbitration based on the UNCITRAL arbitration rules and 5% were handled using the Arbitration Institute of the Stockholm Chamber of Commerce (SCC) as the arbitration institution. Arbitration institutions other than this were responsible for 5%.

In terms of their relation with this paper, about one-third of the investment treaty arbitrations have been processed within an international legal framework

38 2015 Survey, above n 8.

39 UNCTAD, IIA Issues Note: Recent Development in Investor State Dispute Settlement (ISDS) (No.1, March 2013), p 4 <<http://unctad.org/en/pages/publications/Intl-Investment-Agreements--Issues-Note.aspx>>.

identical to that of international commercial arbitration, a framework that UNICTRAL has been promoting based on the New York Convention.

It can therefore be said that the ICSID, in a specific range, is also in competitive relationship with the arbitration institutions that exist throughout the world. Moreover, arbitration institutions such as the SCC already boast extensive past achievements in investment arbitration, and it is possible that the future will bring an increase in the number of arbitration institutions, such as the Kuala Lumpur Regional Centre for Arbitration (KLRCA) for example, which makes clear that to administrate investment treaty arbitration is one of their main roles.

If so, international commercial courts such as SICC might handle future disputes concerning investment agreements. Highly credible arbitration bodies such as the SCC or ICC are private organizations, but they already have accumulated a record of handling investment arbitration. Considering this, it is thought that future international investment agreements will incorporate international commercial courts as further choices under ISDS provisions. If international commercial courts function as dispute resolution bodies with internationally highly regarded judges, introduced impartial and transparent dispute resolution procedures, and have adopted the state-of-art practices developed through international arbitration, it is predictable that international commercial courts such as the SICC will be fully capable of dealing with investment treaty disputes.

4.2.3 Conversion of Judgments of the DIFC Courts to Arbitration

Awards

The previous sections analyzed the fact that international mediation and investment treaty arbitration expanded their international enforceability by utilizing the New York Convention, which has generally been seen as a system for international commercial arbitration. This corresponds to the fact that the SICC and other international commercial courts are now searching for a method of using the Hague Convention on Choice of Court Agreements to compete with international arbitration. The SICC in particular, is making efforts to apply the Hague Convention in this sense,⁴⁰ and one of its significant merits is that it will abruptly expand the recognition and enforcement of judgments of the SICC to include whole EU member states.

However, more radically and rather surprisingly, the DIFC Courts began to implement the new practice in 2015 based on a concept that has by far

⁴⁰ Menon, above n 3 at para. 58.

transcended the efforts of the SICC.⁴¹ This is a method of utilizing the recognition and enforcement system based on the New York Convention, by referring a monetary judgment by the DIFC Courts to the DIFC-LCIA, which is an arbitration institution annexed to the DIFC, and converting the monetary judgment into an arbitration award by an expedient arbitration. As shown above, the strategy of ensuring the enforceability of judgments by the DIFC Courts has been successful. Now, these are recognized and enforced not only in the UAE, but also in the Anglo Commonwealth countries and the GCC member states. Also, the judgments of DIFC Courts are enforceable in the countries that have bilateral agreements with the UAE concerning that.⁴² Therefore, a method of using the DIFC-LCIA as a choice are useful when the enforcement of the judgment is required in the jurisdiction which these agreements cannot cover. The arbitration awards by the DIFC-LCIA according to this procedure is called as Judgment-Converted-Award.

This method, which was proposed by Michael Hwang, the Chief Justice of the DIFC Courts,⁴³ is an unprecedented new practice. Recently, the word "innovation" has been frequently used in the discussions of international arbitration.⁴⁴ Though the word seems unfamiliar in the legal field, it has reminded us of the importance of trying various conceivable measures, particularly on the procedural side of dispute resolution. Probably, we should be more positive in evaluating it as long as it be supported by the urgent necessity of the globalizing market societies.

Many novel mechanisms that are now appearing in international dispute resolution are taking advantage of the flexibility of international arbitration procedures. Moreover, many of these are intended to escape from the shackles of a country's legal system and respond to the needs of modern international business. These mechanisms usually employ some well-established legal

41 DIFC Courts Practice Direction No 2 of 2015 – Referral of Judgment Payment Disputes to Arbitration.

42 Amended DIFC Courts Practice Direction No. 2 of 2015 – Referral of Judgment Payment Disputes to Arbitration 27 May 2015 | Practice Directions <<http://difccourts.ae/amended-difc-courts-practice-direction-no-2-of-2015-referral-of-judgment-payment-disputes-to-arbitration/>>.

43 Michael Hwang "The DIFC Courts Judgment-Arbitration Protocol – Referral of Judgment Payment Disputes to Arbitration," The DIFC Courts Lecture, 19 November 2014 <<http://difccourts.ae/difc-courts-chief-justices-explanatory-lecture-notes-referral-judgment-payment-disputes-arbitration-november-2014/>>.

44 For example, in the subtitle of the 2015 survey: "Improvements and Innovations in International Arbitration." 2015 Survey, above n 8.

principles widely shared by the lawyers in the world, as expedient mechanisms to achieve effectiveness by intentionally expanding the original scope and method of application. Among these, party autonomy is most widely used, and has frequently been employed as a tool for maximizing the respect for choice of law agreements, arbitration agreements, and choice of court agreements, etc. Converting judgments of a national court into arbitration awards to respond to the needs of the parties is probably also justified as an expansion of the arbitration agreement which is underpinned by the principle of party autonomy.

4.3 *International Memoranda Between Courts*

From the time they were established, the DIFC Courts fostered international trust by prioritizing the links between the legal systems of England and Singapore. In 2011, lawsuits based on choice of court agreements related to international commercial transactions around the world were recognized to be brought into the DIFC Courts. And, for securing the effective dispute resolution based on it, DIFC Courts are aggressively concluding memoranda with the overseas courts so as to improve the situation of recognition and enforcement beyond the borders. It has already concluded such memoranda with the Commercial Court of England, the Supreme Court of Singapore, the United States District Court for the Southern District of New York, New South Wales Supreme Court, Federal Court of Australia, the Kazakhstan Supreme Court, the High Court of Kenya, and the National Court Administration of Korea. Even assuming that it is difficult to recognize the binding force in international law in such memoranda, they are counted on to have practical effects by encouraging recognition and enforcement while establishing cooperative relationships.

V *CONCLUSIONS*

The establishment of international commercial courts and the various ventures undertaken there clearly mark the starting of a new age in private international law or international civil procedural law. These developments signify that we are on the verge of the arrival of a full-scale restructuring process that will globalize dispute resolution systems. We witnessed the advance of international arbitration practices that started with the New York Convention, along with the formation and maturation of a body of global lawyers to implement and create a new form of international commercial dispute resolution processes.

This has revealed the comprehensive application of new understanding fermented by the growth of experience through the methods developed mainly in international arbitration practice conducted to establish a new legal framework to promote the globalization of dispute resolution mechanisms. Now, this new knowledge is starting to be used in accordance with aggressively and carefully

planned strategies to realize concrete objectives. By making the maximum use of new mechanisms as weapons to achieve break-through, we are witnessing the realization of a revolution that tries to satisfy the demands of modern business, which strongly requires the globalization of legal systems, which, until now, only focused on individual countries. At the very least, the trends that have now appeared are aggressive, unprecedented in the history of the legal fields of private international law and international civil procedural law.

It may be that such progress has rarely been known by both lawyers and business persons in Japan. Regarding such trends, the lawyers driven by unprecedented conviction are transforming the infrastructure of international business dispute resolution based on the accumulation of new experiences generated through the advancement of globalization driven by international arbitration, and none of them are considering the possibility of returning to the old ways. In fact, the rise of the SICC and the DIFC Courts is only the tip of an iceberg visible above ocean waters, hiding activities related to the day-to-day work of lawyers that at the same time, create new experiences that become the driving force behind the establishment of these new courts. It has become a movement that anyone involved in international business transactions cannot ignore anymore. This paper has been written to provide an early report of these events.

